Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-1165

WILLIAM J. SCOTT,

Petitioner,

vs.

THE UNITED STATES OF AMERICA,

Respondent.

REPLY BRIEF.

WILLIAM A. BARNETT,
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Chicago, Illinois 60603,
726-4480,

PERRY L. FULLER,
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Counsel for Petitioner, William J. Scott.

Gunthorp-Warren Printing Company, Chicago • Financial 6-6565

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The government's memorandum in opposition suggests that the order denying petitioner's motion to disqualify the prosecutor is not an appealable order. (Government br. 2) In both civil and criminal cases, orders ruling on attorney disqualification motions have been held appealable under the collateral order doctrine of *Cohen* v. *Beneficial Industrial Loan Corp.*, 337 U. S. 541, 69 S. Ct. 1221, 93 L. Ed. 1528 (1949). *Silver Chrysler Plymouth Inc.* v. *Chrysler Motors Corp.*, 496 F. 2d 800 (2nd Cir. 1974); *Schloetter* v. *Railoc of Indiana*, 546 F. 2d 706 (7th Cir. 1976); *In the Matter of the Special February Grand Jury*, 581 F. 2d 1262 (7th Cir. 1978); *United States* v. *Dolan*, 570 F. 2d 1177 (3rd Cir. 1978); *United States* v. *Mahan*, 550 F. 2d 1005 (5th Cir. 1977).

The government cites *United States* v. *MacDonald*, 435 U. S. 850 (1978). However, *MacDonald* does not involve a disquali-

fication motion but held that a denial of a motion to dismiss on speedy trial grounds did not meet the criteria of the *Cohen* case. The applicability of *Cohen* to disqualification motions is a matter to be decided on a case by case basis. *Silberling Manufacturing Co.* v. *International Nickel Co., Inc.*, 596 F. 2d 1217 (3rd Cir. 1977).

On March 19, 1980, the jury returned a verdict finding petitioner guilty on count I of the indictment and not guilty on counts II, III, IV and V.

Should this court conclude that there is no jurisdiction because the order denying the motion to disqualify the prosecutor is not an appealable order, the order of this court should so indicate. If the order was not appealable, the Seventh Circuit also lacked jurisdiction so that the order will be reviewable on the appeal from the final judgment entered in this case. Without such an indication from this court, the petitioner may be deprived of his right to review of this crucial order.

Respectfully submitted,

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